

House Engrossed

**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

CHAPTER 362

# **HOUSE BILL 2337**

AN ACT

AMENDING SECTIONS 41-1009 AND 49-471.03, ARIZONA REVISED STATUTES; RELATING  
TO REGULATORY ENFORCEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1009, Arizona Revised Statutes, is amended to  
3 read:

4 41-1009. Inspections and audits; applicability; exceptions

5 A. An agency inspector, auditor or regulator who enters any premises  
6 of a regulated person for the purpose of conducting an inspection or audit  
7 shall, unless otherwise provided by law:

8 1. Present photo identification on entry of the premises.

9 2. On initiation of the inspection or audit, state the purpose of the  
10 inspection or audit and the legal authority for conducting the inspection or  
11 audit.

12 3. Disclose any applicable inspection or audit fees.

13 4. Afford an opportunity to have an authorized on-site representative  
14 of the regulated person accompany the agency inspector, auditor or regulator  
15 on the premises, except during confidential interviews.

16 5. Provide notice of the right to have on request:

17 (a) Copies of any original documents taken by the agency during the  
18 inspection or audit if the agency is permitted by law to take original  
19 documents.

20 (b) A split of any samples taken during the inspection if the split of  
21 any samples would not prohibit an analysis from being conducted or render an  
22 analysis inconclusive.

23 (c) Copies of any analysis performed on samples taken during the  
24 inspection.

25 (d) Copies of any documents to be relied on to determine compliance  
26 with licensure or regulatory requirements if the agency is otherwise  
27 permitted by law to do so.

28 6. Inform each person whose conversation with the agency inspector,  
29 auditor or regulator during the inspection or audit is tape recorded that the  
30 conversation is being tape recorded.

31 7. Inform each person who is interviewed during the inspection or  
32 audit that:

33 (a) Statements made by the person may be included in the inspection or  
34 audit report.

35 (b) Participation in an interview is voluntary, unless the person is  
36 legally compelled to participate in the interview.

37 (c) The person is allowed at least twenty-four hours to review and  
38 revise any written witness statement that is drafted by the agency inspector,  
39 auditor or regulator and on which the agency inspector, auditor or regulator  
40 requests the person's signature.

41 (d) The AGENCY inspector, auditor or regulator may not prohibit the  
42 regulated person from having an attorney or any other experts in their field  
43 present during the interview to represent or advise the regulated person.

1           B. On initiation of an audit or an inspection of any premises of a  
2 regulated person, an agency inspector, auditor or regulator shall provide the  
3 following in writing:

4           1. The rights described in subsection A of this section and section  
5 41-1001.01, subsection C.

6           2. The name and telephone number of a contact person who is available  
7 to answer questions regarding the inspection or audit.

8           3. The due process rights relating to an appeal of a final decision of  
9 an agency based on the results of the inspection or audit, including the name  
10 and telephone number of a person to contact within the agency and any  
11 appropriate state government ombudsman.

12           4. A statement that the agency inspector, auditor or regulator may not  
13 take any adverse action, treat the regulated person less favorably or draw  
14 any inference as a result of the regulated person's decision to be  
15 represented by an attorney or advised by any other experts in their field.

16           5. A notice that if the information and documents provided to the  
17 agency inspector, auditor or regulator become a public record, the regulated  
18 person may redact trade secrets and proprietary and confidential information  
19 unless the information and documents are confidential pursuant to statute.

20           6. The time limit or statute of limitations applicable to the right of  
21 the agency inspector, auditor or regulator to file a compliance action  
22 against the regulated person arising from the inspection or audit, which  
23 applies to both new and amended compliance actions.

24           C. An agency inspector, auditor or regulator shall obtain the  
25 signature of the regulated person or on-site representative of the regulated  
26 person on the writing prescribed in subsection B of this section and section  
27 41-1001.01, subsection C, if applicable, indicating that the regulated person  
28 or on-site representative of the regulated person has read the writing  
29 prescribed in subsection B of this section and section 41-1001.01, subsection  
30 C, if applicable, and is notified of the regulated person's or on-site  
31 representative of the regulated person's inspection or audit and due process  
32 rights. The agency inspector, auditor or regulator may provide an electronic  
33 document of the writing prescribed in subsection B of this section and  
34 section 41-1001.01, subsection C and, at the request of the regulated person  
35 or on-site representative, obtain a receipt in the form of an electronic  
36 signature. The agency shall maintain a copy of this signature with the  
37 inspection or audit report and shall leave a copy with the regulated person  
38 or on-site representative of the regulated person. If a regulated person or  
39 on-site representative of the regulated person is not at the site or refuses  
40 to sign the writing prescribed in subsection B of this section and section  
41 41-1001.01, subsection C, if applicable, the agency inspector, auditor or  
42 regulator shall note that fact on the writing prescribed in subsection B of  
43 this section and section 41-1001.01, subsection C, if applicable.

1 D. An agency that conducts an inspection shall give a copy of the  
2 inspection report to the regulated person or on-site representative of the  
3 regulated person either:

- 4 1. At the time of the inspection.  
5 2. Notwithstanding any other state law, within thirty working days  
6 after the inspection.  
7 3. As otherwise required by federal law.

8 E. The inspection report shall contain deficiencies identified during  
9 an inspection. Unless otherwise provided by state or federal law, the agency  
10 shall provide the regulated person an opportunity to correct the deficiencies  
11 unless the agency ~~determines~~ DOCUMENTS IN WRITING AS PART OF THE INSPECTION  
12 REPORT that the deficiencies are:

- 13 1. Committed intentionally.  
14 2. Not correctable within a reasonable period of time as determined by  
15 the agency.  
16 3. Evidence of a pattern of noncompliance.  
17 4. A risk to any person, the public health, safety or welfare or the  
18 environment.

19 F. IF THE AGENCY IS UNSURE WHETHER A REGULATED PERSON MEETS THE  
20 EXEMPTIONS IN SUBSECTION E OF THIS SECTION, THE AGENCY SHALL PROVIDE THE  
21 REGULATED PERSON WITH AN OPPORTUNITY TO CORRECT.

22 ~~F.~~ G. If the agency allows the regulated person an opportunity to  
23 correct the deficiencies pursuant to subsection E of this section, the  
24 regulated person shall notify the agency when the deficiencies have been  
25 corrected. Within thirty days after receipt of notification from the  
26 regulated person that the deficiencies have been corrected, the agency shall  
27 determine if the regulated person is in substantial compliance and notify the  
28 regulated person whether or not the regulated person is in substantial  
29 compliance. If the regulated person fails to correct the deficiencies or the  
30 agency determines the deficiencies have not been corrected within a  
31 reasonable period of time, the agency may take any enforcement action  
32 authorized by law for the deficiencies.

33 ~~G.~~ H. ~~For agencies with authority under title 49,~~ If the agency does  
34 not allow the regulated person an opportunity to correct deficiencies  
35 pursuant to subsection E of this section, on the request of the regulated  
36 person, the agency shall provide a DETAILED written explanation of the reason  
37 that an opportunity to correct was not allowed.

38 ~~H.~~ I. An agency decision pursuant to subsection E or ~~F~~ G of this  
39 section is not an appealable agency action.

40 ~~I.~~ J. At least once every month after the commencement of the  
41 inspection, an agency shall provide a regulated person with an update on the  
42 status of any agency action resulting from an inspection of the regulated  
43 person. An agency is not required to provide an update after the regulated  
44 person is notified that no agency action will result from the agency

1 inspection or after the completion of agency action resulting from the agency  
2 inspection.

3 ~~J~~. K. For agencies with authority under title 49, if, as a result of  
4 an inspection or any other investigation, an agency alleges that a regulated  
5 person is not in compliance with licensure or other applicable regulatory  
6 requirements, the agency shall provide written notice of that allegation to  
7 the regulated person. The notice shall contain the following information:

8 1. A citation to the statute, regulation, license or permit condition  
9 on which the allegation of noncompliance is based, including the specific  
10 provisions in the statute, regulation, license or permit condition that are  
11 alleged to be violated.

12 2. Identification of any documents relied on as a basis for the  
13 allegation of noncompliance.

14 3. An explanation stated with reasonable specificity of the regulatory  
15 and factual basis for the allegation of noncompliance.

16 4. Instructions for obtaining a timely opportunity to discuss the  
17 alleged violation with the agency.

18 ~~K~~. L. Subsection ~~J~~ K of this section applies only to inspections  
19 necessary for the issuance of a license or to determine compliance with  
20 licensure or other regulatory requirements. Subsection ~~J~~ K of this section  
21 does not apply to an action taken pursuant to section 11-871, 11-876, 11-877,  
22 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection ~~J~~-  
23 K of this section is not a prerequisite to otherwise lawful agency actions  
24 seeking an injunction or issuing an order if the agency determines that the  
25 action is necessary on an expedited basis to abate an imminent and  
26 substantial endangerment to public health or the environment and documents  
27 the basis for that determination in the documents initiating the action.

28 ~~L~~. M. This section does not authorize an inspection or any other act  
29 that is not otherwise authorized by law.

30 ~~M~~. N. Except as otherwise provided in subsection ~~K~~- L of this  
31 section, this section applies only to inspections necessary for the issuance  
32 of a license or to determine compliance with licensure or other regulatory  
33 requirements applicable to a licensee and audits pursuant to enforcement of  
34 title 23, chapters 2 and 4. This section does not apply:

35 1. To criminal investigations, investigations under tribal state  
36 gaming compacts and undercover investigations that are generally or  
37 specifically authorized by law.

38 2. If the AGENCY inspector, auditor or regulator has reasonable  
39 suspicion to believe that the regulated person may be engaged in criminal  
40 activity.

41 3. To the Arizona peace officer standards and training board  
42 established by section 41-1821.

43 4. To certificates of convenience and necessity that are issued by the  
44 corporation commission pursuant to title 40, chapter 2.

1       ~~N.~~ O. If an AGENCY inspector, auditor or regulator gathers evidence  
2 in violation of this section, the violation may be a basis to exclude the  
3 evidence in a civil or administrative proceeding.

4       ~~Ø.~~ P. Failure of an agency, board or commission employee to comply  
5 with this section:

6       1. May subject the employee to disciplinary action or dismissal.

7       2. Shall be considered by the judge and administrative law judge as  
8 grounds for reduction of any fine or civil penalty.

9       ~~P.~~ Q. An agency may make rules to implement subsection A, paragraph 5  
10 of this section.

11       ~~Ø.~~ R. Nothing in this section shall be used to exclude evidence in a  
12 criminal proceeding.

13       ~~R.~~ S. Subsection A, paragraph 7, subdivision (c) and subsection E of  
14 this section do not apply to the department of health services for the  
15 purposes of title 36, chapters 4 and 7.1.

16       ~~S.~~ T. Subsection B, paragraph 5 and subsection E of this section do  
17 not apply to the corporation commission for the purposes of title 44,  
18 chapters 12 and 13.

19       Sec. 2. Section 49-471.03, Arizona Revised Statutes, is amended to  
20 read:

21       49-471.03. Inspections

22       The control officer shall comply with section 41-1009, except that  
23 section 41-1009, subsection ~~Ø~~ P, paragraph 1 does not apply.

APPROVED BY THE GOVERNOR MAY 19, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2016.

Passed the House February 17, 2016

by the following vote: 54 Ayes,

6 Nays, 0 Not Voting

[Signature]  
Speaker of the House

☒ Pro Tempore

[Signature]  
Chief Clerk of the House

Passed the Senate May 7, 2016

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

7 day of May, 20 16

at 3:33 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 19th day of

May

at 11:13 o'clock A. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 19th day of May, 20 16

at 3:20 o'clock P M.

[Signature]  
Secretary of State

H.B. 2337